

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1101

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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:
In the Matter of the
Grand Jury Subpoenas of

MARIA T. CUETO

77-1101

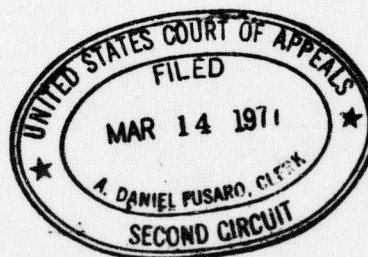
and

RAISA NEMIKIN,

Appellants.
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APPELLANTS APPENDIX

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DATE	PROCEEDINGS
1-12-77	IN RE: SAM GOLDBERG A WITNESS BEFORE GJ--Filed memo endorsed on motion dated 1-11-77. Motion denied as most, so ordered, MacMahon.
1-12-77	IN THE MATTER OF DAVID HARDING A WITNESS BEFORE THE GRAND JURY-- Filed affidavit of T. BARRY KINGMAN.
1-13-77	USA -v- JOHN DOE--Filed writ of H/C ad test. for Manuel Mendez Torres writ satisfied. Motley, J.
1-13-77	USA -v- JOHN DOE--FILED WRIT OF H/C ad test. for Percy Gilmer writ satisfied. Griesa, J.
1-13-77	USA -v- JOHN DOE--File writ of H/C ad test. for Raymond L. Johnson. writ satisfied. Higgins, J.
1-13-77	IN THE MATTER OF JOHN D'AMELIO--Filed order that John D'Amelio be released from MCC immediately and remain released until 6:00pm for Jan. 18, 1977. Knapp, J.
1-17-77	USA -v- JOHN DOE--Filed affidavit writ H/C ad test. for Betty McFarlan writ ret. 1-17-77.
1-17-77	IN THE MATTER OF DAVID HARDING, Filed order that David Harding be returned to the MCC no later than 5:30 P.M. 1-20-77 to continue his incarceration pursuant to the writ of H/C ad test.
1-18-77	IN THE MATTER OF DAVID HARDING.--Filed affdvt for BARRY KINGHAM.
1-18-77	IN RE: Filed one brown envelope ordered sealed until further order of the court. Bryan, J. (AUSA :KAPLAN)
1-18-77	USA -v- JOHN DOE--FILED Affdvt. for writ of H/C ad test, for Neal Charles, writ issued ret. 1-24-77.
Jan. 24-77	IN RE: GRAND JURY EMPANELLED ON OCT. 14, 1976-- Filed affdvt. and notice of motion on behalf of Mesirow & Co. for an order quashing the Subpoena Duces Tecum dated 11/17/76 and served upon Mesirow & Co. on 11/23/76.-- Ret.- 1/25/77 at 10:00 A.M. room 506. (Memorandum of Law Attached).
1-24-77	IN RE: GRAND JURY SUBPOENAS--Filed affdvt & notice of motion on behalf of Reverend John M. Allin for order quashing four GJ subpoenas duces tecum on 1-23-77 at 10:00 AM RM. 506.--Filed memo in support of intervenor's motion to quash subpoenas.
1-24-77	USA -v- JOHN DOE ----Filed writ of H/C ad test for Jerry Sorrentino writ satisfied 1-20-77. Bonsal, J.
1-24-77	USA -v- JOHN DOE ----Filed writ of H/C ad test for Philip J. Murgolo writ satisfied. Pollack, J.
1-24-77	USA -v- JOHN DOE ---Filed writ of H/C ad test. for TEDMORE JACK WRIT SATISFIED. BRIANT, J.
1-24-77	USA -v- JOHN DOE ----Filed writ of H/C ad test. for JOSEPH SAPPRA WRIT SATISFIED. Carter, J.
1-24-77	USA -v- JOHN DOE ----Filed writ of H/C ad test. for JOSEPH M. SINNO WRIT SATISFIED. GRIESA, J.
1-24-77	USA -v- JOHN DOE --Filed writ of H/C ad test. for FRANCIS SMITH WRIT SATISFIED. CONNER, J.
1-24-77	USA -v- JOHN DOE --Filed writ of H/C ad test. for IVAN LEON MOLINARIO WRIT SATISFIED. DUFFY, J.
1-24-77	USA -v- JOHN DOE --Filed writ of H/C ad test. for RICHARD WALLS, JR WRIT SATISFIED. PIERCE, J.
1-25-77	IN RE: EDWARD DI SERO --A witness for GJ record on appeal has been certified & transmitted to US court of appeals second circuit on 1-25-77.
1-25-77	IN RE: THE petition for disclosure of certain proceedings before 1 1-21-75 & 4-10-75 additional grand juries. Contents ordered sealed until further order of court. PIERCE, J.

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DATE	PROCEEDINGS
1-26-77	IN RE: GRAND JURY SUBPOENAS ON 10-14-76.--Filed memo endorsed on motion dated 1-24-77, upon application of the moving party, the attached motion is withdrawn with leave of court. So ordered. Pierce
1-26-77	In Re: Grand Jury Subpoena served on Milton L. Wood, John M. Allin, Maria Cueto & Raisa Nemikin.--Filed affdvt & notice of motion on behalf of Francisco Reuss-Froylan, as intervenor for an order quashing four Grand Jury subpoenas.--Ret. 1-26-77 10:00 AM Rm. 506
1-27-77	IN RE: GRAND JURY SUBPOENA--Filed affdvt. of David V. Keegan in support of motion to quash.
1-28-77	IN RE: JOHN DOE---Filed one brown envelope w/transcripts ordered sealed by Judge Pierce. (Dist. of Columbia.)
1-27-77	USA-v-JOHN DOE --Filed affdvt. of writ of H/C ad test for BETTY McFARLAN writ issued ret. 1-23-77
1-28-77	IN RE: GJS-v- DAVID KEEGAN - FILED memo endorsed on application for adjoument dated 1-25-77 to inspect sealed minutes on proceedings held before Judge Owen US-v-ALVEREZ 76 Cr.324, should be & hereby is denied Pierce
1-28-77	IN RE: GRAND JURY SUBPOENA ON ZIM ISRAEL et al--Filed affdvt. & notice of motion to quash subpoena ret. 1-27-77.
1-28-77	IN RE: GRAND JURY SUBPOENA ON ZIM ISRAEL et al--Filed memo endorsed on motion filed 1-28-77 upon motion of the moving party, the attached motion is withdrawn with leave of the court. So ordered. Pierce, J.
1-28-77	IN RE: GRAND JURY SUBPOENA ON DAVID KEEGAN, ESQ.--Filed memo endorsed on unsigned show cause order motion denied. Pierce, J.
1-28-77	USA -v- DAVID C. GILBERG--Filed true copy of USCA stip & order discontinuing the appeal without cost to either party.
1-31-77	USA -v- JOHN DOE--- Filed writ of H/C ad test for Alexandra Becker writ issued. ret. 2-1-77
2-1-77	IN RE: GRAND JURY SUBPOENA of Bishop Milton A. Wood---Filed affdvt. & notice of motion to quash subpoena, Ret. 2-2-77 in Part 1.
2-1-77	IN RE: GRAND JURY SUBPOENA OF Bishop Milton A. Wood---Filed memo of law.
2-1-77	IN RE: GRAND JURY SUBPOENA OF Bishop Milton A. Wood---Filed motion to quash grand jury subpoenas.
2-1-77	IN RE: GRAND JURY SUBPOENA OF Bishop Milton A. Wood---Filed motion for production of all records of interviews of movant conducted by government agents.
2-1-77	USA -v- JOHN DOE--Filed affdvt for writ of H/C ad test, writ issued ret 2-16-77.
2-2-77	USA -v- John Doe---Filed writ of H/C ad test. for BART M. SCHWARTZ writ issued ret. 2-8-77.
2-2-77	USA -v- John Doe---Filed writ of H/C ad test. for Betty McFarland writ issued ret. 2-3-77.
2-2-77	IN RE: GRAND JURY SUBPOENAS ON JOHN DOE--Filed one brown envelope dated 2-1-77 ordered sealed until further order of the undersigned or of another judge of this court. Pierce, J.
2-2-77	IN RE: GRAND JURY SUBPOENA ON SEBASTIAN INTERSIMONE.--Filed notice of appeal from this order entered on 2-1-77. Mailed notice to U.S.A.
2-2-77	IN RE: GRAND JURY SUBPOENA ON DAVID V. KEEGAN-- Filed notice of appeal from this order entered on 2-1-77. Mailed notice to U.S.A.
2-3-77	IN RE: GRAND JURY SUBPOENAS.--served on Milton L. Wood et al, Filed affdvt & notice of motion on behalf of intervenors to require US Attorney to return all documents previously produced by John M. Allin & Milton L. Wood.--ret. 2-4-77 at 1:30 P.M. Rm. 506.
2-3-77	IN Re: Grand Jury Subpoenas.--Filed affdvt of Paul Moore Jr,

DATE	PROCEEDINGS
2-3-77	IN THE MATTER OF GRAND JURY SERVICE UPON JOHN DOE: Filed one brown envelope ordered sealed & shall remain so until further order of this court. Pierce, J.
2-4-77	IN RE: GRAND JURY SUBPOENA SERVED ON BISHOP MILTON L. WOOD, --Filed memo endorsed on motion filed 1-24-77.
2-4-77	IN RE: GRAND JURY SUBPOENA SERVED ON MARIA CUSTO & RAISA NEMIKIN--File memo endorsed on motion filed 2-1-77 motion to suppress is denied. Pierce, J.
2-4-77	IN RE: GRAND JURY SUBPOENA SERVED ON BISHOP FRANCISCO REUSS-FROYLAN Filed memo endorsed on motion filed 1-26-77, motion to intervene is denied. Pierce, J. Filed transcript of record of proceedings, dated 4-21-76
2-7-77	JOHN D'AMELIO -v- USA
2-7-77	IN RE: GRAND JURY STREETWORKERS, Filed one brown envelope sealed with 17 pages. Pierce, J.
2-7-77	IN RE: GRAND JURY SUBPOENA, Filed one brown envelope dated 2-1-77 36 pg sealed. Pierce, J.
2-7-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et al, Filed in Court.
2-7-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD., GOVTS MEMO OF LAW IN OPPOSITION TO MOTION TO INTERVENE & QUASH, Filed in court.
2-7-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et ano, affdvt Filed in court.
2-7-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et ano, Govts memo of law in opposition to motion to quash, Filed in court.
2-7-77	IN RE: GRAND JURY SUBPOENAS OF MARIA CUETO et ano, Filed movants reply memo, For the foregoing reasons & those set forth in the rest of mov papers, the subpoena to Bishop Wood should be suppressed & the subpoenas to movants should be quashed.
2-7-77	IN RE: BETTY McFARLAND, WITNESS BEFORE GJ., Filed one brown envelope ordered sealed. Tenny, J.
2-7-77	USA-V- JOHN DOE--Filed writ of H/C of testator Erilio Rivas, writ ret. 2-8-77.
2-4-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et al, APPLICANTS The Church & Society Network, Inc., --Filed motion for leave to file brief as Amici Curiae. (Filed in Court 2-4-77)
2-7-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et al, Filed memo endorsed, motion for leave to file a brief as amicus curiae is denied as moot. Pierce, J.
2-7-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et al, --Filed memo endorsed on motion dated 2-3-77, MOTION DENIED. Pierce, J.
2-3-77	IN RE: CONNIE VINSON WITNESS ON GJ, --Filed memo opinion # 45579-- motion to quash is denied--Vinson's refusal to testify is without just cause & is directed to return to GJ & testify. Lasker, J.
2-8-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD, ---Filed one large brown envelope sealed until further order of the undersigned or other judge of this court. So. ordered. Pierce, J.
2-8-77	IN RE: GRAND JURY SUBPOENAS SERVED ON MILTON L. WOOD et al., Filed memo and order #45586.
2-8-77	IN RE: GRAND JURY EMPANELLED IN THIS DIST. ON 8-19-75, --FILED affdvt of Thomas A. Bernstein re; return of impounded documents.
2-8-77	IN RE: GRAND JURY EMPANELLED IN THIS DIST. ON 8-19-75., --Filed order authorizing attorneys of antitrust div. to return any impounded documents according to terms & conditions indicated. Tenny, J.

DATE	PROCEEDINGS
2-9-77	IN RE: TO SUBPOENAS SERVED UPON MARIA CUETO & RAISA NEMIKIN---Filed ELIZ affdvt requesting adjournment of these proceedings until physically a to properly represent clients.
2-10-77	IN RE: GRAND JURY SUBPOENA DUCES TECUM SERVED ON LOCAL 445 Intern'l Broth hood of Teamsters,---Filed affdvt & notice of motion to quash grand jury subpoena duces tecum.
2-8-77	USA -v- John Doe. Filed writ of H/C ad test. for Steven David writ satis
2-14-77	IN RE: GRAND JURY PROCEEDINGS, Filed one brown envelope ordered sealed until further order of the court. Tenney, J.
2-14-77	JOHN TORTORS -v- USA---Filed motion to inspect grand jury minutes, & affdvt in support of motion., ret: 2-22-77.
2-14-77	USA -v- ARNOLD NELSON MAHLERi-- Filed USCA true copy of order withdrawing the appeal.
2-14-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Tom Hom aka Icin Hawk Hom aka Kin Tom aka Kin Hom, writ issued, ret 2/16/77
2-14-77	USA -v- JOHN DOE---FILED AFFDVT FOR WRIT OF H/C ad test for Richard- Louis Busby, writ issued, ret. 3/7/77
2-14-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for William- Arthur Hamman, writ issued, ret, 2-28-77.
2-15-77	IN RE: WITNESS FOR GRAND JURY---Filed one brown envelope ordered sealed until further order of the court. Tenney, J.
2-15-77	USA -v- JOHN DOE---Filed one brown envelope ordered sealed until further order of the court. Tenney, J.
2-16-77	IN RE: GRAND JURY SUBPOENA DUCES TECUM SERVED ON 445 Rlty, Inc.---Filed affdvt & notice of motion for order to quash GJSDT, on 445 Rlty ret. 3-1-77 Part I.
2-16-77	IN RE: GRAND JURY SUBPOENA SERVED ON DAVID KEEGAN ESQ.---Filed memo endorsed on Sebastian Intersimone moves to unseal all matters ordered sealed by this court, subject only to further order to the contrary from the court of appeals, the application to unseal those proceeding: which transpired before the undersigned is hereby denied so ordered Pierce, J.
2-16-77	IN RE: GRAND JURY---Filed one large brown envelope with 13 pages ordered sealed by Judge Bryan.
2-17-77	USA -v- EDWARD D. SERO---Filed true copy of USCA mandate affirming the judgment of the Dist. court-Judgment entered-Clerk.
2-17-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test on Francis, J. Smith, writ issued ret. 2/23/77.
2-18-77	IN RE: GRAND JURY SUBPOENA ---Filed one brown envelope containing 11 pages of transcript dated 1-25-77. Pierce J.
2-22-77	IN RE: TO SUBPOENA SERVED UPON BISHOP MILTON WOOD, et al---Filed order correcting the memo & order of Judge Pierce dated 2-4-77, as indicated Pierce, J.
2-23-77	IN RE: HERMAN SOLOWAY, WITNESS BEFORE THE GRAND JURY ---Filed ^{affdvt} & on that Herman Soloway give testimony & produce documents before said grand jury. Frankel J.
2-23-77	IN RE: JOHN D'AMELIO---Filed Govts' memo in opposition to D'Amelio's motion for release.
2-24-77	IN RE: RAISA NEMIKIN---Filed motion for disclosure of electronic or other surveillance, for full investigation for surveillance for an evidential hearing to show just cause & for further relief.
2-24-77	IN RE: RAISA NEMIKIN---Filed affdvt in support of motion.
2-24-77	IN RE: RAISA NEMIKIN---Filed Govts memo in opposition to Govts motion to hold Raissa nemikin in contempt.

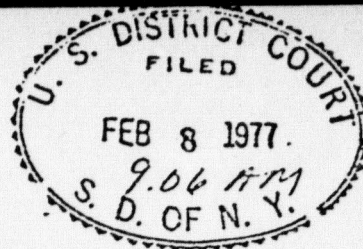
DATE	PROCEEDINGS
2-23-77	USA -v- JOHN DOE, ---Filed affdvt for writ of H/C ad test, Christian-Nunez a/k/a Severino Tineo etc. Writ issued ret. 3-4-77.
2-23-77	IN RE: GRAND JURY SUBPOENA SERVED ON DAVID V. KEEGAN---Ordered that Clerk of Court transmit directly to the court of appeals the sealed documents described in exhibit A. Pierce, J.
2-25-77	IN RE: DAVID HARDING WITNESS FOR GRAND JURY---Filed affdvt & order that David Harding be returned to MCC no later than 2-25-77 at 5:30PM. to continue his incarceration pursuant to writ of H/C ad test. Frankel, J.
2-24-77	IN RE: GRAND JURY SUBPOENA SERVED ON STREETWORKERS INC. et ano.---Filed memorandum opinion #41627, For the reasons stated below, however, this court finds that this witness is entitled to claim his fifth amendment privilege against self incrimination under the current circumstances. So ordered. Tenney, J.
2-25-77	IN RE: GRAND JURY SUBPOENA DUCES TECUM SERVED UPON ABRAHAM GORDON---File affdvt & notice of motion on behalf of A. Gordon for order quashing CJS served on A. Gordon Pres. of Local 801 Int'l Brotherhood of teamsters ret. 3-8-77 in part I.
2-25-77	IN RE: GRAND JURY SUBPOENA DUCES TECUM SERVED UPON ABRAHAM GORDON---File affdvt & notice of motion on behalf of A. Gordon for order quashing CJS served on A. Gordon Pres. of Local 719 of Int'l Brotherhood of Teamsters ret. 3-8-77 part I.
2-24-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test, for Ronald Sofia, writ issued, ret. 2-25-77.
2-24-77	JOHN TORTORA -v- USA ---Filed affdvt requesting minutes, Court submits that petitioner's motion is frivolous & in all respects denied.
2-28-77	JOHN TORTORA -v- USA ---Filed memo of law in support.
2-24-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C for Felix Ortiz, writ issued ret. 3-7-77.
2-28-77	IN RE: To one small brown envelope dated sealed 2-25-77 by order of Judge Marvin E. Frankel, USA-R.I. Jossen.
2-28-77	IN RE: Grand Jury subpoena served on Milton L. Wood---Filed one large brown envelope ordered sealed. Frankel, J.
2-28-77	IN RE: ONE SMALL BROWN ENVELOPE---Filed brown envelope w/sealed order & affdvt. FRANKEL, J.
2-28-77	IN RE: RAISA NEMIKIN WITNESS BEFORE THE 11-9-76 ADDITIONAL GRAND JURY. Filed order that Raisa Nemikin give testimony & provide information before Grand Jury. Tenney, J.
2-28-77	IN RE: RAISA NEMIKIN WITNESS BEFORE THE 11-9-76 ADDITIONAL GRAND JURY. Filed order that Raisa Nemikin be confined at MCC until such time that she is willing to testify before the Grand Jury. Frankel, J.
3-2-77	IN RE: GRAND JURY PROCEEDINGS OF MANALIN RLTY CO.---Filed affdvt & Show cause order to quash CJSOT & to suppress other evidence obtained by the use of prior CJS. ret. 3-7-77 Rm. 506 Frankel, J.
3-2-77	IN RE: GRAND JURY PROCEEDINGS OF MANALIN RLTY CO. ---Filed memo in support for quashing CJSOT.
3-1-77	IN RE: BETTY MC FARLAND WITNESS FOR CJ, ---FILED AFFDVT & ORDER that Betty McFarland be returned to MCC on 2-25-77 no later than 5:30 PM pursuant to the writ of H/C ad test. Frankel, J.
3-1-77	IN RE: DAVID HARDING WITNESS FOR CJ, ---Filed affdvt & order that David Harding be returned to MCC on 2-25-77 no later than 5:30 P.M. pursuant to writ of H/C ad test. Frankel, J.
3-1-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Adolfo Sobocki Tobias writ satisfied.
3-1-77	USA -v- John Doe---Filed affdvt for writ of H/C ad test for Roger Ugarc writ satisfied.

DATE	PROCEEDINGS
3-2-77	IN RE: GRAND JURY SUBPOENA ON SABASTIAN INTERSIMONE et ano -v- U.S.A. The record on appeal in the above entitled proceeding has been certif & transmitted to The united states court of appeals for the 2nd circu on 3-2-77 Frankel, J.
3-2-77	IN RE: SUBPOENA SERVED UPON RAISA NEMIKIN: Filed Notice of Appeal to the U.S.C.A., from an order of the U.S.D.C. made and entered on the 26th day of February, 1977, hol the petitioner-appellant in civil contempt pursuant to Title 28 U.S.C. sect. 1826 an remanding her to the custody of the United States Marshal for the life of the grand j until such time as she gives answers to the questions before the grand jury. Maile c to the U.S. Atty. SONY
3-3-77	IN RE: BETTY MCFARLAND WITNESS BEFORE GRAND JURY ---Filed affdvt & order that Betty McFarland shall be returned to MCC no later than 5:30 P.M. on 3-4-77 to continue her incarceration pursuant to the writ of H/C ad test. Frankel J.
3-7-77	JOHN TORTORA -v- USA---Filed Govt's memorandum of law & affidavit of mailing.
3-7-77	IN RE: MARIA CUETO WITNESS IN GRAND JURY.---Filed notice of appeal on order dated 3/4/77., copy sent to Thomas E. Engel asst. US Attny.
3-4-77	IN RE: JOHN D'AMELIO ---Filed memo & order denying motions of JOHN - D'AMELIO re; his release from the MCC. So ordered Knapp, J.
3-7-77	IN RE: MARIA CUETO A WITNESS BEFORE THE NOV. 9-76 additional Grand Jury Filed order that Maria Cueto be confined to MCC until she testifies before GI or until expiration of GJ on 5-8-78. Frankel, J.
3-7-77	IN RE: MARIA CUETO A WITNESS BEFORE GJ---Filed affdvt of Maria Cueto.
3-7-77	IN RE: MARIA CUETO A WITNESS BEFORE GJ---Filed affdvt of Thomas E. Engel.
3-7-77	IN RE: BETTY MCFARLAND WITNESS BEFORE GJ.---Filed order that Betty McFarl be returned to MCC no later than 5:30 P.M. on 2-16-77. Tenney J.
3-7-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Leander Clarke, writ is hereby allowed.
3-8-77	IN RE: ANGELO PRISCO WITNESS BEFORE GJ---Filed affdvt of Barbara S. Jones & Govts memorandum of law.
3-8-77	USA -V- JOHN DOE ---Filed affdvt for writ of H/C ad test for Arnold- Rosenbaum a/k/n as Arnold Ross, writ issued ret. 3-10-77.
3-8-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Michael Guibi writ satisfied. Wyatt, J.
3-8-77	USA -v- JOHN DOE---FILED AFFDVT FOR writ of H/C ad test for Christian - Nunez a/k/a Severino Tineo etc. writ allowed. Frankel, J.
3-9-77	IN RE: APPLICATION OF US ATTY.---Filed one large brown envelope ordered sealed until further order of the court. MUSA Jerry Siegel, Van Pelt E
3-9-77	IN RE: GRAND JURY SUBPOENA DUCES TECUM DATED 11-26-74---Filed order that the documents herein marked Grand Jury Exhibits ordered sealed by this court be released to the custody of Mr. Arnold Stream. Conner, J.
3-9-77	USA -v- I. MARCO L. LAURENTI, et al---Filed copy of transcript dated 1-31-77.
3-9-77	JOHN TORTORA -v- USA ---Filed memo by plaintiff for order to inspect grand jury proceedings, Motion denied. Frankel, J.
3-10-77	IN RE: GRAND JURY SUBPOENA SERVED ON SAUL L. VICTOR--- Filed memorandum that the privileged documents submitted for inspection, certain which are privileged listed as indicated. The various other documents are not within the claimed privilege & are to be turned over to the grand jury forthwith. So ordered. Duffy, J.

DATE	PROCEEDINGS
3-10-77	JOHN TORTORA, -v- USA ---filed petitioners traverse to memorandum of law.
3-11-77	IN RE: MARIA CUEVO & RAISA NEMIKIN GRAND JURY WITNESS---Original record on appeal has been certified & transmitted to the USC of Appeals for the second circuit on this 11th day of March 1977.

M Fiske

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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IN THE MATTER OF SUBPOENAS SERVED :
UPON BISHOP MILTON L. WOOD, :
MARIA CUETO and RAISA NEMIKIN :

77 Cr. Misc.
M 11-118

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APPEARANCES:

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45586

LAWRENCE W. PIERCE, D.J.

MEMORANDUM AND ORDER

In April 1975 a grand jury was empaneled in this district to commence an investigation into a series of alleged terrorist bombings of banks, corporate offices, and other buildings located in the City of New York. According to the government, the responsibility for these bombings has been claimed by an organization known as Fuerzas Armadas de Liberacion Nacional Puertorriquena ("FALN"). The term of the April 1975 grand jury expired in October 1976, and on November 9, 1976, the present grand jury was empaneled to continue its investigation of these bombings. According to the subpoenas issued by that body, the grand jury is presently investigating possible violations of 18 U.S.C. §371, which statute makes it a crime for any person to conspire to commit any offense against the United States.

On November 24, 1976, the grand jury issued a subpoena duces tecum to Bishop Milton L. Wood, Executive for Administration of the Episcopal Church, which subpoena commanded the production of certain documents and records of the Episcopal Church Center located in the City of New York. Among the items requested were all records in the custody of the Bishop relating to Maria Cueto, National Director, and Raisa Nemikin, Secretary, of the National Commission on Hispanic Affairs of the Episcopal Church ("the Hispanic Commission"). The Hispanic Commission is

an agency of the Episcopal Church established in 1970 to develop programs to aid in solving the social, economic and spiritual needs of the Hispanic Community of the United States. According to the respondents, the Hispanic Commission has developed programs in the South Bronx and in Los Angeles, California; it has also funded certain programs in Wisconsin, Illinois, and New Mexico. There is a dispute as to whether the Hispanic Commission presently is in the process of being dissolved.

As set forth in the affidavit of the prosecutor in charge of the grand jury inquiry, the subpoena served upon Bishop Wood was issued following a series of meetings between the Bishop and agents of the Federal Bureau of Investigation ("FBI") during which meetings Bishop Wood stated that the Executive Council of the Episcopal Church desired to cooperate fully with the government in helping to locate one Carlos Torres, a member or past member of the Hispanic Commission, and believed by the government to be a member of the FALN and involved in certain of the bombings under investigation.

On November 3, 1976, local police officers and agents of the FBI in Chicago, Illinois, uncovered a "bomb factory" in a Chicago apartment, containing certain papers linking the occupants to the FALN. Fingerprints of certain persons, including Carlos Torres, were found in the premises, and the agents also uncovered a piece of paper indicating that

Torres was affiliated with the Hispanic Commission. This led the agents to the Hispanic Commission and the interviews with Bishop Wood which followed.

On November 18, 1976, agents of the FBI interviewed respondents Cueto and Nemikin at the offices of the Episcopal Center. In response to questioning, respondents stated that they had seen Torres on October 26, 1976, when he had visited their offices; they further stated that they did not know his whereabouts. Shortly thereafter, while on business of the Commission in Puerto Rico, Cueto and Nemikin were again questioned by FBI agents. Further, on November 22, 1976, the agents visited respondents at the Episcopal Center and questioned them about one Oscar Lopez, as well as concerning other individuals and former members of the Commission whose whereabouts were apparently unknown to the FBI. Respondents Cueto and Nemikin stated that they did know the persons involved, but they did not have, or declined to give, any further information about the individuals beyond acknowledging their present or former association with the Hispanic Commission. According to the affidavit of Maria Cueto, the agents then informed her that if she didn't cooperate with them, she would be called before the grand jury and "things would be very bad" for her. Raisa Nemikin states that an FBI agent told her that if the FBI found out she was withholding information, she would be charged with harboring a fugitive.

In the interim, Bishop Wood and certain of his employees had been complying with all requests of the government

agents for information. The Bishop furnished to the FBI personnel records of the Hispanic Commission, as well as expense records of several persons affiliated with the Commission. According to the government, the November 24, 1976 subpoena served upon Bishop Wood was fully complied with and is not presently outstanding. Thus, by an order entered this day, this Court denied as moot a motion to quash that subpoena.

On January 4, 1977, the grand jury issued subpoenas ad testificandum which were served upon respondents Cueto and Nemikin. (Ex. G and H annexed to respondent's motion papers). Three days later, a subpoena was issued and served upon Bishop John M. Allin, Presiding Bishop of the Episcopal Church; however, that subpoena was withdrawn by the government on January 20, 1977, and it is not presently outstanding.

Ms. Cueto appeared pursuant to the testimonial subpoena on January 10, 1977, but refused to be sworn before the grand jury until after she had retained an attorney. Thereafter, respondent Cueto was brought before Judge Lloyd MacMahon of this Court, sitting at that time in this Part, and again she refused to be sworn. Judge MacMahon held Ms. Cueto in summary contempt and ordered her incarcerated. Thereafter Ms. Cueto, through her counsel, entered into an agreement with the government pursuant to which she was released from confinement, but asked no questions before the grand jury. On February 1, 1977, respondents

filed motions to quash, a motion to suppress the evidence produced by Bishop Wood, and a motion for an order directing the government to produce for their inspection all records of interviews conducted of them by government agents. In the days following, certain other persons filed motions to intervene and to quash.

This Court has made its rulings on the motions to intervene and on the motions to quash the Woods and Allin subpoenas, as well as on the respondent's motion to suppress. Thus, the remaining questions involve the Cueto and Nemikin testimonial subpoenas and the motions to produce FBI records.

The Motions to Quash

The motions to quash made by respondents Cueto and Nemikin raise identical issues, and thus they will be addressed together. In support of their motions, respondents make three arguments. First, movants argue that the subpoenas were issued in violation of the Hispanic Commission's members' right to free association, protected by the first amendment of the Constitution of the United States. Second, movants claim that the grand jury inquiry infringes upon their free exercise of religion, and that the subpoenas have and will create a "chilling effect" upon the unfettered exercise of the Hispanic Commission's activities. The intervenor Diocese joins in these two arguments. Movants' final argument is that the subpoenas have been issued not for valid grand jury purposes but to assist the FBI in its investigation; thus it is claimed that the actions

of the government constitute an abuse of grand jury process.

Accordingly, this Court is called upon to resolve a controversy which the movants assert brings the powers of the grand jury into conflict with fundamental rights protected under the Constitution. Under such circumstances, courts have sought to perform the dual role of zealously protecting constitutional rights and of being alert to guard against abuses of the investigatory powers of the grand jury. In this balancing of claimed conflicting interests, the Court must also weigh the traditional powers of the grand jury to investigate into the possible commission of crime, and the right of the public to every man's evidence except where a valid privilege is appropriately invoked. See Branzburg v. Hayes, 408 U.S. 665, 688 (1972); Hoffman v. United States, 341 U.S. 479, 485 (1951); Bursey v. United States, 466 F.2d 1059, 1083 (9th Cir. 1972). Thus, the inquiry involves a delicate balancing of the various interests involved, with a continuing attention to the protection of fundamental liberties. As stated recently by Judge MacMahon of this Court,

"Rights guaranteed by the Bill of Rights must be zealously guarded if they are not to be whittled away, little by little, through minor seemingly innocuous intrusions which may, over the course of time, result in significant erosion of those rights."
(In re Nwamu, No. M11-118 (S.D.N.Y. Nov. 4, 1976))

The Supreme Court has often admonished the prosecutors and the courts to be

"alert to repress any abuses of the investigatory power invoked, bearing in mind that while grand juries 'may proceed, either upon their own knowledge or upon the examination of witnesses, to inquire . . . whether a crime cognizable by the courts has been committed,' yet 'the most valuable function of the grand jury [has been] not only to examine into commission of crimes, but to stand between the prosecutor and the accused.'" (Hoffman v. United States, supra, 341 U.S. at 485 (citations omitted))

There can be little doubt under the cases that the first amendment rights of free association and freedom of religion reach within the closed doors of the grand jury chamber. See Branzburg v. Hayes, supra; Burse v. United States, supra; In re Verplank, 329 F.Supp. 433, 438 (C.D. Cal. 1971); see also Application of United Electrical Workers, 111 F.Supp. 858 (S.D.N.Y. 1953).

Accordingly, when first amendment rights are validly asserted on a motion to quash, the burden shifts to the government to demonstrate a "compelling interest" sufficient to outweigh the possibility of infringement. See Branzburg v. Hayes, supra, 408 U.S. at 690; Burse v. United States, supra; Glass v. Heyd, 457 F.2d 562, 564 (5th Cir. 1972).

As Judge Hufstedler of the Ninth Circuit has written,

"When governmental activity collides with First Amendment rights, the Government has the burden of establishing that its interests are legitimate and compelling and that the incidental infringement upon First Amendment rights is no greater than is essential to vindicate its subordinating interests."
(Burse v. United States, supra, 466 F.2d at 1083)

In order to apply these principles to the circumstances here, the Court must first ask whether the constitutional rights asserted here are in fact in danger of infringement. The Court has examined the papers of the parties and has concluded that the facts are not in any significant dispute. It is clear from the record that the Hispanic Commission is a social and community agency, one which is affiliated with a religious organization. There is some dispute as to whether the Commission is now in the process of being dissolved. Respondents Cueto and Nemikin are not priests of the Church, even though they allege that part of their mission is to care for the spiritual needs of their members. Bishops Paul Moore and Reuss-Froylan assert in their affidavit that they have met with and communicated with both respondents to the subpoenas at issue; however, there is no allegation by any of the moving parties or their associates in the Church structure that any priest-penitent relationship exists between the Bishops and the respondents, or between the respondents and the members of the Hispanic Commission whom the government seeks to locate. Although the Bishops assert a confidentiality with respect to communications between themselves and the respondents, there is no indication that the government seeks to enquire into any such conversations; rather, the government seeks to discover what is known by respondents with respect to the suspected FALN fugitives. This is not a case where the government seeks to pry into protected communications between a clergyman and

his communicants, such as occurred in In re Verplank, supra, where the grand jury subpoenaed a minister and his aides who were thought to have engaged in counselling young persons with respect to the military draft. In that case, despite the allegation of a priest-penitent privilege, the court upheld a modified subpoena against the minister. See 329 F.Supp. at 438.

A witness summoned before the grand jury may be excused from giving testimony only where a valid privilege can be asserted. Upon a review of all the submissions, the Court is compelled to arrive at the conclusion that the work performed by the respondents herein, while perhaps performed under spiritual auspices, is primarily in the nature of social work. A social worker has no privilege with respect to communications with a person who seeks his or her aid, Weinstein's Evidence ¶504[03] (1975). This Court is not free to extend the cloak of the priest-penitent privilege so far as to cover persons engaged in social work simply because the Hispanic Commission is affiliated with a religious organization.

It would be frivolous to suggest that their work in the Hispanic Commission confers upon respondents or their colleagues a license to commit crime, if indeed such occurred here. See Branzburg v. Hayes, supra, 408 U.S. at 691. The Court has reviewed certain grand jury materials in camera, and is compelled to conclude that the actions of the government in this investigation seek to place no restraint upon what respondents

choose to believe in their religion or their politics. It happens in this case that the government has uncovered certain peculiar common relationships between certain alleged members of the FALN, certain alleged members of the Hispanic Commission, and certain persons suspected of committing criminal acts in this district. Accordingly, with respect to the freedom of religion claim, the Court must conclude that even taking all the movants' factual allegations at face value, the actions of the government here do not appear to place any cognizable burden on the free exercise of any religious rights. However, since freedom of religion has been "zealously protected, sometimes even at the expense of other interests of admittedly high social importance," see Wisconsin v. Yoder, 406 U.S. 205, 214 (1972), the Court will enquire further into the first amendment rights asserted here by consideration of the freedom of association claim.

Decisions indicate that when the grand jury seeks to discover the names of members of an organization, there must be demonstrated some "meaningful relationship" between the organization and the witnesses summoned and the subject matter of the grand jury inquiry. See Bison v. Florida Legislative Investigative Commission, 372 U.S. 539 (1963). Another court has suggested that when a grand jury seeks the names of the members of an organization who are suspected of committing crimes, the government has thereby demonstrated a "compelling interest" sufficient to outweigh the possibility of infringement

of associational rights. See Glass v. Heyd, 457 F.2d 562, 564 (5th Cir. 1972). The Court finds these principles to be applicable here.

It is clear from the public record in this case that the government is investigating a series of alleged common relationships between the membership of the Hispanic Commission, the membership of the FALN, and persons thought to have been associated with the Chicago "bomb factory". The names of two of these persons--Carlos Torres and Oscar Lopez--are known to all parties. The Court's in camera inspection of the grand jury materials indicates that the pattern is indeed one which may connect several other persons to the activities under investigation. Even from the movants' own accounts of their FBI interviews, it is clear to this Court that the government is proceeding with care, that the investigation is sharply focused, and that specific crimes and specific persons are under investigation. Thus, the government has shown a "substantial connection" between the information sought and the governmental interest, and that its investigation has been focused rather than broadly invading rights of free association. See United States v. Bursey, supra, 466 F.2d at 1085, 1088. Accordingly, to the extent that first amendment rights have been asserted on these motions, the Court concludes that the government's showing has demonstrated a sufficiently compelling state interest to outweigh any possible consequential effect upon the exercise of fundamental rights if indeed any such effect

is present. See Branzburg v. Hayes, supra.

Respondents Cueto and Nemikin further allege that the processes of the grand jury are being used for purely investigatory purposes, and that the prosecutor is employing the panel as an arm of the FBI. While the historical powers of the grand jury are broad, since the panel operates in secrecy and to a great extent under the guidance of the prosecutor, opportunities for abuse of subpoena power are ever present. The grand jury is an integral component of the judicial branch of government, which has the power of compulsory process, a power which the Congress has not chosen to grant to the investigative offices of the executive branch. The courts must be vigilant against abuse of the grand jury, for any such abuse would tend to erode the division between the separate and independent branches of the federal government. See Hoifman v. United States, supra; In re Stolar, 397 F.Supp. 520 (S.D.N.Y. 1975).

Thus, there are limits imposed upon the use of grand juries. The government may not employ the powers of the grand jury to enquire into matters solely for use in civil litigation. See United States v. Doe, 341 F.Supp. 1350 (S.D.N.Y. 1972). The prosecutor may not employ the subpoena power solely to summon witnesses to his office to conduct a private investigation. See Dubin v. United States, 221 F.2d 520, 524 (D.C. Cir. 1954). Nor may the government employ the grand jury for the sole purpose of preparing an already pending indictment for

trial. United States v. DelToro, 513 F.2d 656, 664 (2d Cir.)
cert. denied, 423 U.S. 826 (1975); United States v. Dardi,
330 F.2d 313, 336 (2d Cir.), cert. denied, 379 U.S. 845 (1964).

In this case movants claim that the use of the grand jury to seek to locate possible fugitives from justice constitutes an abuse of the grand jury power. Two years ago this Court was called upon to pass upon a somewhat similar question. In re Stolar, 397 F.Supp. 520 (S.D.N.Y. 1975) involved a case where the government insisted upon calling an attorney before the grand jury to ask him the address of a client who might know the whereabouts of a fugitive from justice. The court in Stolar noted that the client whose address was sought was in no sense of the word unavailable to the prosecutor; indeed, the attorney had offered to produce his client voluntarily before the FBI. It was upon the government's refusal to accept this offer, and the insistence that the attorney be called before the grand jury, that this court concluded that abuse of process was present. See 397 F.Supp. at 522-23.

The factual distinction here is crucial. Carlos Torres is truly unavailable; there has been no offer to produce him for an informal interview. Accordingly, this case must be governed by the accepted principle that the grand jury may properly be employed to locate other prospective witnesses, even when those persons may be fugitives from justice. See Hoffman v. United States, 341 U.S. 479 (1951). As the Supreme

Court stated in that case, "the Government may inquire of witnesses before a grand jury as to the whereabouts of unlocated witnesses" Id. at 488; see also In re Stolar, supra, 397 F.Supp. at 523.

"The Grand Jury's scope of inquiry . . . is not limited to events which themselves may result in criminal prosecution, but is properly concerned with any evidence which may afford valuable leads for investigation of suspected criminal activity" (United States v. Cohn, 452 F.2d 881, 883 (2d Cir. 1971) (Kaufman, J.), cert. denied, 405 U.S. 975 (1972).)

Nor is the Court persuaded by movant's other claims of grand jury abuse. The delivery of subpoenaed materials to the FBI is not illegal, even if the materials are not immediately placed before the grand jury. See United States v. Kleen Laundry & Cleaners, Inc., 381 F.Supp. 519 (S.D.N.Y. 1971). The statements attributed to the FBI agents to the effect that the agents believed respondents were not being forthright, and to the effect that respondents might be called before the grand jury, do not make out a showing of abuse of process. Such statements do not constitute prosecutorial misconduct. See United States v. Chevoor, 526 F.2d 178 (1st Cir. 1975), cert. denied, 425 U.S. 935 (1976).

The movants' claim of political harassment and prosecutorial misconduct are, in the final analysis, conclusory and unsupported by sufficiently detailed factual allegations to require a hearing on the question. As Chief Judge Coffin of the First Circuit wrote in a similar matter,

"While use of the grand jury for bad faith harassment of a political dissident with no expectation that any testimony concerning the commission of a crime would be forthcoming would constitute an abuse, that is not the situation in this case." (In re Santiago, 533 F.2d 727, 730 (1st Cir. 1976)).

This Court is compelled to reach the same conclusion. Even without considering the government's in camera submission, the record demonstrates that there is a good faith and legitimate basis for the summoning of these two witnesses. Indeed, movants' own recollections of their FBI interviews demonstrate that they may possess knowledge pertinent to the inquiry. Accordingly, the Court must conclude that the movants have failed to demonstrate even the mere possibility that the grand jury is being improperly employed by the prosecutor. Such a minimal showing dictates that the matter end here.

Thus, with respect to the motion for discovery of FBI records, and for an evidentiary hearing on the abuse of process claim, under settled principles of law, the application must be denied. A mere claim of improper grand jury process is not even sufficient to require the government to respond; nor does it indicate that any hearing is necessary. See In re Milloy, 529 F.2d 770, 775 (2d Cir. 1976). The movants have failed to demonstrate any "compelling necessity" or "particularized need" such as would justify a wholesale intrusion into the grand jury proceedings. See United States v. Gonzales, 38 F.R.D. 326 (S.D.N.Y. 1965).

"Absent evidence of the probability of abuse of grand jury process, there is no right to intrude into the secrecy of grand jury proceedings in order that one may be heard concerning the propriety of a proposed investigation." In re Grand Jury Investigation (General Motors Corporation, 32 F.R.D. 175, 181 (S.D.N.Y. 1963) (Edelstein, C.J.))

Movants also cite Burse v. United States, supra, for the proposition that they have a right to inspect the FBI interview records prior to testifying before the grand jury, lest they be subject to prosecution for false statement. However, Burse does not stand for the proposition cited. Rather, in that case the court concluded that a witness had a due process right to see prior grand jury testimony prior to answering repetitive questions. See 466 F.2d at 1080. A grand jury witness has no right to inquire into the sources underlying questions asked of the witness, see Ciffo v. McClosky, 273 F.Supp. 604 (S.D.N.Y. 1967), nor does a prospective witness have a right to inspect other evidence presently before the panel, even where the witness may be a target of the investigation. See United States v. Winter, 348 F.2d 204 (2d Cir.), cert. denied, 382 U.S. 955 (1965). Accordingly, the movants' motion for a hearing and for inspection of FBI interview sheets must be denied. In re Millow, supra; In re Santiago, supra.

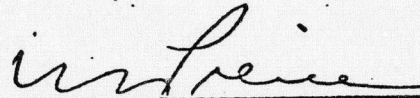
The Court concludes that the arguments advanced by respondents Cueto and Nemikin and by the intervenor Diocese in support of their motions are without merit. With the rarest possible exceptions, no one is immune from appearance before the

grant jury. United States v. Dionisio, 410 U.S. 1 (1973);
In re Kinoy, 326 F.Supp. 400 (S.D.N.Y. 1970).

The motions to quash are denied in all respects.
The motion to inspect and for a hearing are also denied.
Respondents Cueto and Nemikin are hereby ordered to appear
before the grand jury forthwith to be sworn and to answer
all questions duly put to each of them.

SO ORDERED.

Dated: New York, New York
February 4, 1977



LAWRENCE W. PIERCE
U. S. D. J.

Endorsement Order

Bishop Francisco Reuss-Froylan of the Episcopal Diocese of Puerto Rico moves to intervene and to quash the subpoenas served in the above matter by a Federal Grand Jury empanelled in this district to investigate certain terrorist bombings claimed to have been committed by the Fuerzas Armadas de Liberacion Nacional Puertorriquena ("FALN").

In this case the subpoenas presently at issue were served upon Maria Cueto and Raisa Nemikin, employees of the National Commission for Hispanic Affairs, affiliated with the Episcopal Diocese of New York. By separate notice of motion, the Bishop of the New York Diocese and the New York Diocese itself have also moved to intervene and to quash.

Courts have allowed intervention by persons not named in grand jury subpoenas where it has been determined that the intervenors have a personal stake in the outcome of the controversy and that the challenged action has and will cause the intervenor injury in fact. In brief, the question is whether Bishop Reuss has standing here. See Baker v. Carr, 369 U.S. 186 (1962); Application of Caldwell, 311 F. Supp. 358, 359 (N.D.Cal. 1970); see also Flast v. Cohen, 392 U.S. 83, 99-100 (1968).

Intervention is appropriate where the person subpoenaed cannot be counted on to risk contempt in order to protect the intervenor's rights. See Gravel v. United States, 408 U.S. 606, 609 n.1 (1972); Intervention may also be allowed where the intervenor is the employer of the persons named and where the employer has a legal or constitutional interest in the confidentiality of the employee's work product. See Application of Caldwell, *supra*. However, if the parties subpoenaed appear equipped to assert their rights and to protect the intervenor by raising the appropriate legal issues, then intervention is unnecessary. See In re Stolar, 397 F. Supp. 520, 522 n.1 (S.D.N.Y. 1975).

None of the principles recited above militate towards intervention here. There is no indication that Bishop Reuss is a target of the investigation, or that he has maintained any priest-penitent relationship with Cueto or Nemikin. The Bishop thus has no personal stake in the outcome of this controversy. Nor is the Bishop the employer of those

who have been subpoenaed; indeed, he is not even associated with the Diocese affiliated with the Hispanic Commission.

To the extent that Bishop Reuss seeks to raise first amendment issues of freedom of religion and association, those interests are adequately raised by the respondents to the subpoenas and by the Episcopal Diocese of New York, whose motion to intervene is granted by order entered this day.

Finally, it is clear to this Court that the respondents Cueto and Nemikin are adequately equipped to seek to protect the interests Bishop Reuss seeks to raise. Accordingly, under the applicable principles of law, the Court concludes that the attached motion to intervene should be, and hereby is, denied.

SO ORDERED.



LAWRENCE W. PIERCE
U. S. D. J.

Dated: New York, N.Y.
Feb. 9, 1977

Endorsement Order

Maria Cueto and Raisa Nemikin move for an order suppressing certain materials produced by Bishop Milton Wood pursuant to a subpoena duces tecum served upon the Bishop and dated November 24, 1976. A copy of the subpoena is annexed to Cueto and Nemikin's motion to quash different subpoenas served upon them in connection with the same grand jury investigation into certain terrorist bombings in this district claimed to have been committed by a group known as the FALN. There is no dispute that Bishop Wood has already complied with the subpoena and the Court has by order entered this day denied a separate motion to quash the Wood subpoena on the ground that the motion is moot.

The Wood subpoena called for typewriting samples from typewriters in the Episcopal Church Center, for all records relating to Maria Cueto and Raisa Nemikin, and for all records of the Center showing disbursements paid for the re-imbursement of travel expenses.

Movants first urge that the materials produced should be suppressed since the production was in violation of first amendment rights to free association and freedom of religion. However, it is clear that the exclusionary rule addresses itself to unreasonable searches and seizures; it is a doctrine which derives from the fourth amendment. See United States v. Calandra, 414 U.S. 338, 348 (1974). The movants cite no legal authority for the novel proposition that the exclusionary rule should be applied to a first amendment claim.

Nor is the Court persuaded by the movants' fourth amendment argument. First, the Court notes that the subpoena was not directed against Cueto and Nemikin, and that the records produced were records of the Church, not of the moving parties. Thus, there is a serious question whether movants have standing to contest the production. See Alderman v. United States, 394 U.S. 165 (1969); Jones v. United States, 362 U.S. 257 (1960).

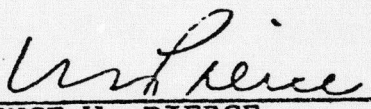
Second, the movants have alleged no facts which, if taken as true, would require the granting of the relief sought. Thus, under applicable principles, no hearing is necessary and the motion should be denied. See United States v. Culotta, 413 F.2d 1343 (2d Cir. 1969), cert. denied, 396 U.S. 1019 (1970).

Further, the decision of the Supreme Court in United States v. Calandra, 414 U.S. 338 (1974) makes clear that the exclusionary rule of the fourth amendment is totally inapplicable to a grand jury proceeding. In Calandra, agents actually seized records and produced them before the grand jury. The respondent thereafter refused to testify before the panel on the ground that the records had been unlawfully seized. Following an extensive review of the history and the function of both the grand jury and the exclusionary rule, the Supreme Court ruled that the evidence seized could be considered by the grand jury regardless of whether or not it was the product of an illegal search and seizure. 414 U.S. 348-50. The Court also re-affirmed the rule that "standing to invoke the exclusionary rule has been confined to situations where the Government seeks to use such evidence [at trial] to incriminate the victim of the unlawful search." *Id.* at 348; see also Brown v. United States, 411 U.S. 223 (1973); Alderman v. United States, *supra*. Accordingly, since the moving parties have not been indicted and since the Government does not seek to introduce the records at trial, the exclusionary rule is inapplicable.

For the purposes of the foregoing discussion, the Court has assumed that the production of documents herein was a "search". However, the most fundamental reason why the attached motion is without merit is the fact that the documents were not produced pursuant to any search; rather, they were voluntarily produced in compliance with a grand jury subpoena duly issued from this Court in connection with an ongoing inquiry into possible criminal conduct. Thus, in this Court's view, the production was not even a "search" or a "seizure" in the first place.

Accordingly, the motion to suppress is denied.

SO ORDERED.



LAWRENCE W. PIERCE
U. S. D. J.

Dated: New York, N.Y.
February 4, 1977

A-29

RECEIVED

United States District Court
SOUTHERN DISTRICT OF NEW YORK

CONFIDENTIAL

TO: HILTON L. WOOD
Bishop
Episcopal Church Center
815 Second Avenue
New York, New York

GREETING:

WE COMMAND YOU that all business and excuses being laid aside, you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court to be held at Room 1403 in the United States Court-house, Foley Square, in the Borough of Manhattan, City of New York; on the 3rd day of December, 1976, at ten o'clock in the fore noon, to testify and give evidence in regard to an alleged violation of Title 18, United States Code, Section 371

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following:

1. Samples of typewriting from every typewriter on the premises of the Episcopal Church Center for the years 1974-1976, inclusive;
2. Any and all records, diagrams, invoices, memoranda or documents which in any way relate to the location and use of Gestetner machines by employees, whether lay or clergy, on premises of the Episcopal Church in New York City for the years 1974-1976, inclusive;
3. Any and all records, documents, and files within your care, custody, control, or possession relating to Maria Cueto and Raisa Nemikin, including personnel files;
4. Any and all financial records within your care, custody, control, or possession for the years 1974-1976 showing disbursements paid by the Episcopal Church Center, ~~on the basis of~~ of the City of New York for the reimbursement of travel expenses;

BEST COPY AVAILABLE

A-30

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

NOTE: The requirements of this subpoena may be satisfied by delivery of the material called for by the subpoena to a Special Agent of the U.S.I. at or before the time required herein for its production.

DATED: NEW YORK, N. Y. November 24, 1976

Clerk:

15/
ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York.

NOTE: Report at Room 450. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant THOMAS E. ENGEL
Tel.: 791-1931

Room 633 - One St. Andrews Plaza
New York, New York 10007

A-31

United States District Court

SOUTHERN DISTRICT OF NEW YORK

TO Bishop John M. Allin or
Any Authorized Officer or Employee of the
National Commission for Hispanic Affairs
Episcopal Church Center
815 Second Avenue
New York, New York

GREETING:

WE COMMAND YOU that all business and excuses being laid aside, you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court to be held at Room 1403 in the United States Court-house, Foley Square, in the Borough of Manhattan, City of New York, on the 10th day of January 1977, at eleven o'clock in the fore noon, to testify and give evidence in regard to an alleged violation of Title 18, United States Code, Section 371

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following:

Any and all records, documents, reports, notes, lists, memoranda, statements, books, papers and things in your care, custody, possession or control which relate to, concern, or reflect, for the years 1970 up to and including 1977; (1) the membership of the National Commission for Hispanic Affairs (the "Commission"); (2) financial statements of the Commission, including, but not limited to, statements showing expenses, salaries, income, gifts and sources thereof; (3) names and addresses of all personnel employed by the Commission; (4) a list of all meetings, conferences, and convocations sponsored in whole or in part by the Commission; and (5) names and addresses of all persons attending said meetings, conferences, and convocations.

A-32

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: NEW YORK, N. Y. January 6, 1977

W. H. HARDT

Clerk.

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York.

NOTE: Report at Room 450. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant **THOMAS E. ENGEL** Room 633
Tel.: (212) 791-1931

FPI MI-5.24 72-604-7689

A-33

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Grand Jury Subpoena : MOTION
Duces Tecum of : TO
BISHOP MILTON L. WOOD : SUPPRESS

COMES NOW MOVANTS, MARIA T. CUETO and RAISA NEMIKIN, as authorized officers and/or employees of the National Commission for Hispanic Affairs of the Protestant Episcopal Church, and by their undersigned counsel, move this Court for a hearing to determine whether the evidence collected through the Subpoena Duces Tecum (hereinafter referred to as the Wood Subpoena) should not be suppressed as a violation of the First and Fourth Amendment to the United States' Constitution as well as the common law privilege of clergy-communicant. The grounds which serve as the basis for these motions are as follows:

1) That the Wood Subpoena, through the information it seeks, violates movants' rights to freedom of association as guaranteed by the First Amendment;

2) That the Wood Sobpoena, through the information it seeks, violates movants' rights to freedom of religion as guaranteed by the First Amendment;

3) That the Wood Subpoena constituted a violation of movants' Fourth Amendment rights in that it was, in fact, a search warrant executed against them, without ever notifying them or giving them an opportunity to litigate its illegality, and consequently, the evidence seized therefrom should be suppressed.

4) That the Wood Subpoena itself constitutes an abuse of the Grand Jury process, in that the F.B.I. is using the subpoena power of the Grand Jury; a power which Congress has consistently denied to them, to further its own investigation in violation of the separation of powers doctrine;

5) That the Wood subpoena is part of a pattern of harassment that the F.B.I. has carried out against individuals and organizations who have expressed their support for the Puerto Rican independence movement and thus constitutes an abuse of the Grand Jury process.

WHEREFORE, movants request that this Court enter an order suppressing the evidence obtained by the Wood Subpoena Duces Tecum or, in the alternative, order an evidentiary hearing at which movants may present evidence in support of their challenges to the lawfulness of the Subpoena Duces Tecum.

Dated: New York, New York
January 26, 1977

Yours, etc.

Elizabeth M. Fink
ELIZABETH M. FINK, ESQ.
351 Broadway, Fourth Floor
New York, New York 10017
(212) 431-4118

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To: CLERK
United States District Court
Southern District of New York

Thomas E. Engel, Esq.
Assistant U.S. Attorney
Southern District of New York

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UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE SUBPOENA
SERVED UPON:

NO. 77 Cr. Misc.
M 11-118

RAISA NEMIKIN

MOTION FOR DISCLOSURE OF ELECTRONIC OR OTHER
SURVEILLANCE, FOR FULL INVESTIGATION FOR SUR-
VEILLANCE, FOR AN EVIDENTIARY HEARING TO SHOW
"JUST CAUSE" AND FOR FURTHER RELIEF

Raisa Nemikin, by her undersigned attorney, respectfully moves this Court pursuant to the Fourth, Fifth and Sixth Amendments to the United States Constitution and Title 18 U.S.C. §§2510-20 and 3504, for certain orders as follows:

1. Movant claims that her subpoena was issued on the basis of information obtained by the government, directly or indirectly, as a result of unlawful electronic surveillance in violation of the Constitution or laws of the United States or of any regulation or standard promulgated pursuant thereto, and was issued as part of a pattern of harassment, which includes but is not limited to electronic surveillance.

2. It is further claimed that the questions that were propounded to her have been prompted by information obtained by the government, directly or indirectly, from unlawful electronic surveillance.

With reference to items 1 and 2 above, as fully alleged in the attached affidavits, Movant seeks an order directing the attorney for the government to disclose the following:

a. Any and all actual voice records, tapes, mechanical or electronic recordings, logs, records, memoranda, letters and airtels of any electronic or other surveillance

- i. of any wire or oral communications to which movant was a party;
- ii. of any wire or oral communications at any place in which movant had an "interest" at the time of the surveillance; "interest" meaning any property rights or any other nexus of use and reasonable expectation of privacy;
- iii. of any wire or oral communications placed under surveillance for the purpose or having the effect in whole or part, of gathering evidence or leads against movant;
- iv. of any wire or oral communications at any place where movant was at the time of the surveillance;
- v. of any wire or oral communications detailed in ii-iv wherein a party to the same is unidentified;
- vi. of any wire or oral communications detailed in ii-iv above in which movant is named or referred to.

b. Any and all actual voice records, tapes, mechanical or electronic recordings, logs, memoranda, records, letters and airtels, or any electronic or other surveillance of wire or oral communications such as are described in a., supra, which surveillance revealed the existence of such conversations but not the contents;

c. Any and all actual voice records, tapes, memoranda, letters and airtels of any electronic or other surveillance of any wire or oral communications to which the attorneys for the witness, their agents or employees, was a party and any conversation at which said attorneys, their agents, or employees were present;

d. The demands for disclosure, a.-c., supra, embrace electronic or other surveillance undertaken not only by the United States its agents and employees, but by any government agency -- state or local -- and by any private person or corporation; and further embrace any wire or oral communications to which a party to that conversation may have allegedly consented;

e. For any electronic or other surveillance as described in a.-d., supra, for which there are no voice records, tapes, mechanical or electronic recordings, logs, memoranda, records, letters, or airtels, the names, addresses and telephone numbers of the persons who conducted such surveillance or who have knowledge of said surveillance.

f. Any and all applications, affidavits, memoranda and other papers submitted in support of applications for executive, administrative or judicial approval of such surveillance as described supra, and all administrative, or judicial approval of such surveillance as described supra, and all administrative, judicial and executive orders and decisions responsive thereto, or relating to the surveillance as described supra.

3. The demands made supra seek not only disclosure of surveillance presently known to the government, but that which in the exercise of due diligence may become known thereto.

4. Movant further moves this Court for entry of an order directing the United States to conduct a search of the files and records of every federal agency which conducts electronic surveillance in order to determine whether there has been electronic surveillance as described supra.

5. Movant further requests entry of an order requiring the United States to inquire with respect to the electronic surveillance described supra of all state and local jurisdictions where movant may have been overheard and to direct a search before the hearing herein requested of the files of every agency within those jurisdictions which conducts electronic surveillance.

6. Movant further requests entry of an order requiring that the government's response to this motion be sworn, by the person or persons in charge of conducting the search for the surveillance described supra, setting forth in detail the nature and the procedures of the investigation conducted and specifying the particular federal, state and local agencies inquired of.

7. Movant further requests an evidentiary hearing to determine:

- a. whether the government has fully complied with the demands made supra;
- b. the standing of movant to raise the issue of the legality of any said electronic or other surveillance;
- c. the legality of any said electronic or other surveillance;
- d. the extent to which said surveillance tainted the commencement of the investigation of movant and her client and provided a basis for the instant subpoena.

8. Movant requests that, in the event that said hearing should disclose that her subpoena is the direct or indirect product of illegal electronic surveillance, such subpoena should be quashed.

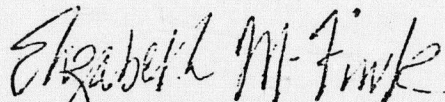
9. Movant further moves that, in the event said hearing should

disclose that the investigation of the movant and her client relies upon illegally obtained evidence, the subpoena be quashed.

The grounds for this motion are that only through effective adversary inquiry can the movant and her client be protected in their right to be free of the effects of unlawful electronic or other surveillance.

Movant asks that this Court issue a protective order directing that the nature and contents of aforesaid requested materials may not be disclosed by the government to any persons, except to counsel of record for movant and counsel for her client.

Respectfully submitted,



Elizabeth M. Fink
Attorney for Movant
351 Broadway
Fourth Floor
New York, N.Y. 10013
(212) 431-4118

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

RAISA NEMIKIN,

A Grand Jury Witness

AFFIDAVIT

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

RAISA NEMIKIN, being duly sworn, deposes and says:

1. I am the Movant in the instant case and make this affidavit in support of my motion to determine whether my subpoena and the questions propounded to me were the product of illegal electronic surveillance in violation of my First, Fourth and Sixth Amendment rights.

2. At the time that the F.B.I. first came to see me, I began to notice strange noises on my phone. I heard clicks, loud shrill whistles, buzzes and other voices.

3. Friends of mine told me that their attempts to call me at different times were unsuccessful with the operator cutting in saying that I had temporarily disconnected my phone. At no time did I temporarily disconnect my phone.

4. Upon information and belief, I have also been followed. Two weeks ago, on my way to visit my mother I noticed two Latino men taking the same route. When I left my mother some hours later, the same men were right behind me the entire trip home.

5. I have also noticed what I assume to be a surveillance van parked in front of my office and in front of my house. The grounds for my assumption is that the windows are blacked out, people are inside

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even though it is parked and it is the same color.

6. Further affidavit sayeth not.

Raisa Hestkin

RAISA HESTKIN

Sworn to before me this 22nd
day of February, 1977,
New York, New York

Elizabeth M. Fink

NOTARY PUBLIC

ELIZABETH M. FINK
Notary Public State of New York
No. 02-4613453
Qualified in Erie County
Commission Expires March 30, 1978

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STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF :
RAISA NEMIKIN : AFFIDAVIT
A Grand Jury Witness :

ELIZABETH M. FINK, being duly sworn, deposes and says:

1. I am the attorney for the above-named Movant and make this affidavit in support of her motion for disclosure of illegal electronic surveillance.
2. I have represented Ms. Nemikin and Ms. Cueto since January 10, 1977.
3. Four days after I was retained by them, I moved to 22 Park Place, Brooklyn, New York, 11217, and assumed a telephone number under the name of Mary Patten, 789-6908.
4. Since that time, I have observed many strange noises on my phone, including clicks, dead hollow sounds, buzzes, drops in volume, loud shrill whistles, failure to obtain a dial tone for as long as a minute, and, many times, other voices on the phone when the receiver is picked up.
5. People who have called my house have had trouble getting through, have heard voices on the line and have heard the tape recordings of other conversations, including their own (See affidavit of Amy Lobenstine attached hereto and made a part hereof).
6. On or about the first week of February, 1977, I saw men digging in front of my house. When my roommate asked them whether they had a permit to tear up the street, they became very agitated and did not answer her

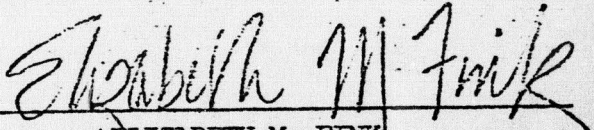
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question. We watched them all day and were unable to ascertain what purpose they had for tearing up the street. It seemed to us likely that they were involved in some kind of surveillance on our home.

7. At various times since I have been retained as counsel in this case, I have noticed a van in front of my house and in front of my office which seems to me to be a surveillance van. (The windows were black out and people were inside of it).

8. On the above facts, I believe that I have been the target of illegal electronic surveillance in violation of my client's rights under the Fourth and Sixth Amendments to the U.S. Constitution.

WHEREFORE it is respectfully submitted that this Court order the government to search all the files of the appropriate federal agencies to ascertain whether illegal electronic surveillance has been conducted, that this Court order an evidentiary hearing to determine whether the government has fulfilled its burden regarding illegal electronic surveillance and that this Court order such other and further relief as may be just and proper.


ELIZABETH M. FINK

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Sworn to before me this 22d
day of February, 1977, New York, New York:

Susan V. Tipograph

NOTARY PUBLIC

Susan V. Tipograph

Notary Public - State of New York

Nb. 31-4629206

Qualified in New York County

Commission Expires March 30, 1978

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TELEPHONE NUMBERS AT WHICH MOVANTS AND THEIR ATTORNEYS HAVE A REASONABLE
EXPECTATION OF PRIVACY

1. Elizabeth M. Fink, Esq.
(residence)
22 Park Place
Brooklyn, New York 11217
(212) 789-6908
2. Susan V. Tipograph, Esq.
(residence)
102 West 14th St.
New York, New York 10011
(212) 691-1846
3. Margaret L. Ratner, Esq.
(residence)
13 Gay Street
New York, New York
(212) 924-5661
4. Margaret L. Ratner, Esq.
(office)
351 Broadway
New York, New York
(212) 431-4118, 4119
5. Daniel L. Meyers, Esq.
(office)
380 Madison Avenue
New York, New York 10017
(212) 687-3118
6. Steven Bernstein, Esq.
(former residence of Ms. Fink)
23 S. Elliot Place
Brooklyn, New York
(212) 855-2078
7. Jesse Berman, Esq.
(office-phone used by
movants' attorneys)
351 Broadway
New York, New York
(212) 431-4600
8. Raisa Nemikin
(former residence)
35-36 76th St. #622
Jackson Heights, Queens 11372
(212) 639-8532
9. Maria Cueto
(office)
815 Second Avenue
New York, New York
(212) 867-8400
10. Raisa Nemikin
(office)
815 Second Avenue
New York, New York
(212) 367-8400
11. Center for Constitutional Rights
(consulting attorneys)
853 Broadway- 14th Floor
New York, New York
(212) 674-3303
12. Dennis Cunningham, Esq.
(consulting attorney)
c/o People's Law Office
110 S. Dearborn
Chicago, Illinois
(312) 236-3504
13. Michael Deutsch, Esq.
(consulting attorney)
West Town Community Defender
Office
2405 W. North Avenue
Chicago, Ill.
(312) 278-6706

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AMY LOEBENSTEIN, being duly sworn, deposes and says:

1. I am thirty-one (31) years old and I reside at 230 West 27th Street, New York, New York 10001.

2. On February 6, 1977, I was at my home when I placed a telephone call (my telephone number is 666-9001) to Judith Clark who resides at 22 East 81st, Brooklyn, New York, telephone number 789-6908. Judith Clark resides with Elizabeth Fink.

3. I had a brief, ten (10) minute conversation with Ms. Clark and then hung up the phone.

4. Moments later, at about 1:44 P.M., I dialed back to the same number (789-6908) because I had forgotten to ask Ms. Clark something during the first conversation. After I dialed the number, I heard a click and immediately following I heard the last sentence of our previous conversation. I then heard another click and the phone began to ring as usual. Ms. Clark then picked up the phone and we proceeded to have a conversation.

Amy Loebenstein

AMY LOEBENSTEIN

Sworn before me this 10th
day of February, 1977.

Susan V. Typogaph

SUSAN V. TYPGRAPH

Notary Public, State of New York
No. 31-2602204

Qualified in New York County
Commission Expires March 30, 1979

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from T.D.